

### **REMARKS**

Applicant brings to the Examiner's attention what is apparently an error in the Examiner's Amendment regarding the claims of this application. In the Examiner's Amendment accompanying the Notice of Allowance, the Examiner cancelled claims 4-7, 10, 13-16, 39-42, 44-46, and 48-51 as being drawn to a non-elected invention. The Examiner's Amendment states that these claims have been cancelled, "as being drawn to non-elected embodiments of the invention, since the allowed claims . . . are not generic." Applicant respectfully disagrees, asserts that the allowed claims include generic claims, and requests rejoinder of the withdrawn claims.

Applicant draws the Examiner's attention to page 5 of the Restriction Requirement mailed 05/04/2007 which states that claims 1-3, 17-36, and 52-76 are generic claims. During prosecution, independent claims 1 and 70 were amended to substantially incorporate elements of claim 25 and independent claim 34 was amended to substantially incorporate elements of allowable claim 60. Claims 1, 25, 34, and 70 were all previously indicated by the Examiner in the Restriction Requirement as being generic.

Applicant respectfully asserts that independent claim 1 as amended is generic to dependent claims 4-7, 10, 13-16 and independent claim 34 as amended is generic to dependent claims 39-42, 44-46, and 48-51. Using claim 1 as an example, the element "a disordered breathing event" as recited in claim 1 is generic to the element "Cheyne-Stokes respiration" as recited in dependent claim 4, the element "periodic breathing" as recited in dependent claim 5; "apnea" as recited in claim 6, and "hypopnea" as recited in claim 7. The element "detecting the disordered breathing event" in claim 1 is generic to "detecting the disordered breathing event based on blood gas level" as in claim 10, "detecting the disordered breathing event based on cardiovascular system conditions" as in claim 13, "detecting the disordered breathing event based on cardiopulmonary conditions as in claim 14, "detecting the disordered breathing event based on nervous system conditions" as in claim 15, and "detecting the disordered breathing event based on non-physiological conditions" as in claim 16.

In the Office Action response dated June 9, 2008, Applicant requested rejoinder of the withdrawn claims 4-7, 10, 13-16, 39-42, 44-46, and 48-51 in view of the allowance of generic claims. As stated in the MPEP, "a requirement for restriction should be withdrawn when a

generic claim . . . is allowable and any previously withdrawn claim depends from or otherwise requires all the limitations thereof.” MPEP 821.04(a) Applicant requests claims 4-7, 10, 13-16, 39-42, 44-46, and 48-51, which were cancelled by the Examiner’s Amendment, be reinstated and reiterates the request made in the Office Action Response dated June 9, 2008 for rejoinder of these claims.

**Amendments to the Specification**

Amendments made to the specification are appropriate for purposes of updating U.S. patent applications that are incorporated by reference in the subject disclosure. None of these changes are believed to affect the scope of the application; therefore, it is requested that the presented changes be entered.

A favorable response to this communication is earnestly requested. Should there be any remaining issues that could be readily addressed over the telephone; the Examiner is encouraged to contact the undersigned at 952.854.2700.

Respectfully submitted,

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